

May 10, 2010

Subject: Warm Springs Extension Project
Line, Track, Station, and Systems Contract No. 02EE-120Q
Request For Qualifications (RFQ)
Explanations to Prospective Design-Build Entities (PDBE) Questions (Set 3)

PDBEs:

The following is in response to PDBE questions in connection with the above referenced RFQ. These explanations do not constitute an addendum to the RFQ Documents.

Q19. The requirements of the RFQ require the submission of financials for the design builder or members of the design builder. We are assuming that the financials are required for the entity that will contract with BART and this does not include its subcontractors and or consultants.

A19. An audited financial statement is required from the entity that will contract with BART and each member of the entity that will contract with BART, per RFQ Appendix A.2 Part II question 4 (page 36 of 95). The term 'member' includes joint venture partners. The term 'member' does not include subcontractors or consultants.

Note that gross revenue is also required for the design-builder and several of its subcontractors and or consultants, per RFQ Appendix A.2 Part I.

Q20. Question 11 of APPENDIX A.2 PART II – ESSENTIAL REQUIREMENTS FOR THE PROSPECTIVE DESIGN-BUILD ENTITY asks the following:

Are all Principal Engineers covered by a professional liability insurance policy with a policy limit of at least \$2,000,000 per occurrence and \$5,000,000 aggregate from a California admitted company that provides coverage for work on a design-build contract?

Professional liability policies are written on a "claims made" basis not on a "per occurrence" basis. We also question the need for the insurance provider to be a "California admitted company" versus a company authorized to do business in California. The vast majority of qualified, top-tier professional service firms are insured by one of three insurance companies. All three are well-established insurers with "A" ratings, but only one of them is a California admitted carrier. Whether or not a company is admitted does not affect the basic coverage form on which the insurance is written. Rejecting firms insured by non-admitted companies unnecessarily restricts qualified proposers. We therefore request that the language in this question be revised to the following:

Are all Principal Engineers covered by a professional liability insurance policy with a policy limit of at least \$2,000,000 per claim and \$5,000,000 aggregate from a California authorized company that provides coverage for work on a design-build contract?

A20. See Addendum No. 1.

Q21. *Appendix A.2, Part IV – Referenced Projects, 3(b). Principal Engineer Firm asks for information such as the Value of Original Contract, Value of Contract (including change orders) and Actual Date of Completion. Does BART want the information to reflect work completed during the design phase (i.e. value of the design contract, etc.) or the construction phase of the project? If BART is requesting the information for the construction phase, in many cases the design firms do not have access to that type of information (Contractor Telephone Number, Construction Manager Information, Value of Change Orders, Time Extensions Granted, etc.). How would BART like the design firms to address these questions?*

A21. BART's goal is to get an indication of the quality of the construction documents produced by the Principal Engineer Firm. BART recognizes that the Value of Change Orders and the other requested information are imperfect measurements of quality (e.g. the owner might change the scope of the program in mid-construction) but the requested information can help shape questions when calling references.

Design firms should address any information problems by 1) furnishing what information is available, and 2) supplementing what information is available with any additional information that might quantitatively provide an assurance of design quality.

Q22. If a contractor is prequalified as a Communications Subcontractor with one PDBE but not all PDBEs; may that Communications Contractor be listed during the bid phase for any PDBE?

A22. Yes, a prequalified subcontractor is prequalified for any PDBE.

Q23. Section 19 Non-Discrimination Program for Subcontracting

According to the information gathered during the Pre-Submittal Conference presentation, our understanding is that second-tier subcontractors will not count towards the specified MBE/WBE availability goals.

If a team's organization is arranged in a configuration where the Principal Engineer is working as a subcontractor to the PDBE, will any subcontractors to the Principal Engineer, technically considered second-tier subcontractors, count towards the Non-Discrimination Program availability goals?

Additionally, will subcontractors under the Traction Power Equipment Installation, Train Control Equipment Installation, Systems Integration, Heavy & Highway, and Other Subcontractors count towards the MBE/WBE goals?

A23. Second-tier Subcontractors will not count towards the availability percentages.

Q24. RFQ Part III(G) and Part III(J)

This question applies to the Scored Questions for the Systems Integration Subcontractor as well as professional services firms included in the Other Subcontractor Part III(J) Section

These scored questions are written with a "contractor" emphasis whereas many questions do not apply directly to professional services firms. As these are scored questions, please clarify how professional services firms will be scored using this form or specify which form they should complete to be scored accurately.

A24. Professional services firms should complete the questionnaire in the RFQ.

There are two questions (number 18 [safety meetings] and number 25 [apprenticeship programs]) where a non-contractor will most likely not receive available points. There are many more questions where a non-contractor will answer "No" and receive maximum points. The contractor emphasis in the RFQ questionnaire should not be a barrier to the prequalification of professional service firms.

Q25. Section 16.9 – Heavy & Highway Subcontractors

This section requires ALL Heavy & Highway Subcontractors to be pre-qualified with the PDBE. Will BART allow Heavy & Highway Subcontractors that are not identified during the RFQ stage to participate in bidding the project in the RFP stage?

A25. No.

Q26. Section 16.10 – Other Subcontractors

This section requires PDBE's to advertise and provide a fixed date and time when the subcontracted work will be awarded to non-prequalified subcontractors. As the actual date of award to subcontractors is contingent upon BART awarding the work to the PDBE, it is not practical for the PDBE to provide an exact date of award to the subcontractors.

Would it be acceptable for the PDBE to provide subcontractors an award date related to BART's contract award? For example, language such as, "PDBE will award subcontract within 60-days of BART's award to PDBE."

A26. Section 16.10 refers to the steps the Design-Builder will have to take to add subcontractors to the Design-Build Entity after award of the contract. If a PDBE wishes to pre-qualify subcontractors during the current RFQ stage, the PDBE will simply include the subcontractor in its pre-qualification statement.

The RFP will include language describing the steps a PDBE will have to take to add subcontractors during the RFP stage.

Q27. Are firms sub-contracted under the Principal Engineer considered first-tier subcontractors with respect to the Certification Regarding Financial Contributions?

A27. No.

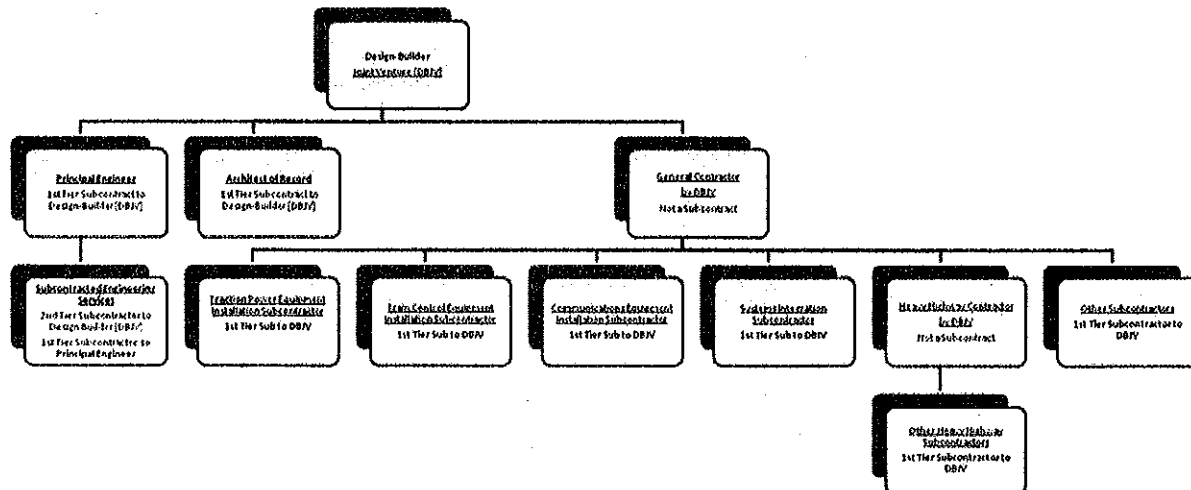
Q28. Must subconsultants to the Principal Engineer disclose all work which is related to a BART project within the last five years?

A28. Yes.

Q29. On a number of the teams, professional services subcontractors, i.e., the Principal Engineer (PE) and Architect of Record (AR) are not members of the Design-Builder Joint Venture (JV) but will be first tier design subcontracts to the JV. As noted in the RFQ, as well as both the outreach and Pre-RFQ submittal meeting, there are M/WBE percentages for Professional Services for first tier subcontracts. We believe the intent of the Non-Discrimination Program is to meet W/MBE goals through inclusion of a number of smaller-local firms who would be second tier subcontractors working under the first tier design subcontractor. In order to comply with the intent of the Non-Discrimination Program relating to Professional Services, we request that you add language to RFQ Section 19.0 Non-Discrimination Program For Subcontracting as follows:

For Professional Services, W/MBE availability percentages under the Non-Discrimination Program shall be evaluated based on either first tier design subcontractors or second tier design subcontractors working under the first tier design subcontractor.

For example, please refer to the following organization chart:



A29. BART will not add the requested language to the RFQ.

Q30. In Appendix C, Certification Regarding Financial Contributions, it states:

"Certification to be executed by PDBE and each proposed first-tier Subcontractor or Supplier whose Subcontract exceeds \$100,000. Make additional copies of the Certification as necessary.

PDBE must use its best efforts to collect the Certification from each first-tier Subcontractor or Supplier whose Subcontract exceeds \$100,000 and to submit such Certifications along with its own to the District on the date Qualification Statements are due.

PDBE is advised that all Certifications must be submitted on the date Qualification Statements are due unless there is reasonable cause for delay; however, PDBE is cautioned that unless all Certifications are submitted within five (5) calendar days after the date Qualification Statements are due, the Qualification Statement may be considered non-responsive. See instructions in the RFQ for submitting Certifications after the due date for Qualification Statements."

It is impossible to submit this form within 5 days of the Qualification Statement due date for each proposed first-tier subcontractor or supplier exceeding \$100,000 (0.03% of the contract value) on a \$300,000,000 design-build project. We don't know enough about the scope, value, design, etc. to determine subcontractors and suppliers of this size.

Please confirm that we only need to provide this Certification for the first tier subcontractors that are required to be listed in the pre-qualification questionnaire, e.g., Designer, Architect, Traction Power Installation Subcontractor, Systems Integrator, Heavy and Highway Subcontractor, etc.

A30. At the RFQ stage, the Certification Regarding Financial Contributions is required for only the firms submitted for pre-qualification.

Additional Certifications will be required at the RFP stage.

Q31. Regarding the number of projects to submit, if a joint venture is comprised of two or more general contractors, what is the maximum number of projects that can be submitted by the "General Contractor Member of the Design-Builder" as called out on page 94 of 95, Appendix A.2?

A31. Please submit the six projects (3 rail transit and 3 public works) that best demonstrate the capabilities of the General Contractor Member(s) of the Design-Builder. (Your six best projects should be sufficient to become pre-qualified; additional projects are not requested or necessary.)

Q32. Referring to the answer to Q1 given on 4-23-10 regarding pre-qualifying multiple heavy and highway subcontractors from which to later bid out the subcontracts, does

this answer also apply to the Traction Power Installation Subcontractor, Train Control Installation Subcontractor, Communications Installation Subcontractor and Systems Integration Subcontractor?

A32. Yes.

Q33. We are the Principal Engineer on one of the potential D-B teams. Do the WBE/MBE percentages apply to the total amount of the Professional Services the Principal Engineer subcontracts out? The presentation given in the last outreach meeting used the term "Bidder's own Work Force" which could be taken to mean the General Contractor. This would mean that the WBE/MBE percentages apply to the amount of Professional Services that the General Contractor subcontracts out to the Principal Engineer and not the amount that the Principal Engineer subcontracts.

A.33. The MBE/WBE availability percentages apply to the total amount subcontracted out by the Design-Builder.

Sincerely,

A handwritten signature in black ink, appearing to read "S. B. Gunawardena".

Sunni Gunawardena
Contract Administrator